

CLAUSE I-139 – TERMINATION FOR CONVENIENCE OF SURA (FIXED-PRICE) (August 2002)

The provisions of this clause shall be applicable only if the value of this subcontract exceeds \$100,000.

- (a) SURA may terminate performance of work under this subcontract in whole or, from time to time, in part if SURA determines that a termination is in SURA's interest. SURA shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by SURA the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - (4) Assign to SURA, as directed by the Subcontracting Officer, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case SURA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by SURA, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Subcontracting Officer, transfer title and deliver to SURA (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to SURA.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that SURA may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which SURA has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by SURA, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, SURA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SURA under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by SURA.
- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Subcontractor may submit to SURA a list, certified as to quantity and quality, of termination inventory not previously disposed of, including items authorized for disposition by SURA. The Subcontractor may request SURA to remove those items or enter into an agreement for their storage. Within 15 days, the Government or SURA will accept title to those items and remove them or enter into a storage agreement. SURA may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Subcontractor shall submit a final termination settlement proposal to SURA in the form and with the certification prescribed by SURA. The Subcontractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by SURA upon written request of the Subcontractor within this 1-year period. However, if SURA determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, SURA may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Subcontractor and SURA may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total subcontract price as reduced by (a) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

- (f) If the Subcontractor and SURA fail to agree on the whole amount to be paid the Subcontractor because of the termination of work, SURA shall pay the Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above –
- (1) For subcontract work performed before the effective date of termination, the total (without duplication of any items) of –
 - (i) The cost of this work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in the subdivision (i) above; and
 - (iii) A sum, as profit on (i) above, determined by SURA under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, SURA shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (2) The reasonable costs of settlement of the work terminated, including –
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that SURA expressly assumed the risk of loss, SURA shall exclude from the amounts payable to the Subcontractor under paragraph (f) above, the fair value, as determined by SURA, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to SURA or to a buyer,
- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by SURA under paragraph (d), (f), or (k), except that if the Subcontractor failed to submit the termination settlement proposals within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If SURA has made a determination of the amount due under paragraph (d), (f), or (k), SURA shall pay the Subcontractor (1) the amount determined by SURA if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted –
- (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of this subcontract;
 - (2) Any claim which SURA has against the Subcontractor under this subcontract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to SURA.
- (k) If the termination is partial, the Subcontractor may file a proposal with SURA for an equitable adjustment of the price(s) of the continued portion of the subcontract. SURA shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause this clause shall be required within 90 days from the effective date of termination unless extended in writing by SURA.
- (l) (1) SURA may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by the Subcontractor for the terminated portion of the subcontract, if SURA believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to SURA upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determination by SURA because of the circumstances.

- (m) Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this subcontract for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to SURA, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by SURA, photographs, microphotographs, or other authentic reproductions, may be maintained instead of originals records and documents.